

**DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF AIR & WASTE MANAGEMENT

SITE INVESTIGATION & RESTORATION BRANCH

**HAZARDOUS SUBSTANCE CLEANUP ACT
POLICY ON BROWNFIELDS GRANTS**

November 2006

I. PURPOSE

- (1) The purpose of this policy is for the Department of Natural Resources and Environmental Control (“DNREC” or the “Department”), Site Investigation and Restoration Branch (“SIRB”) to provide Brownfield Grant funding opportunities to assist any eligible party in paying “reasonable remedial costs incurred in responding to a hazardous substance remedy...” (7 Del. C. Section 9113(c)(4)). The monies are to be spent from the Hazardous Substance Cleanup Fund (the “Fund”) as established under the authority of the Hazardous Substance Cleanup Act (HSCA), 7 Del. C., Section 9113. The Department will seek to give preference to *brownfields redevelopment projects* with public benefit, such as affordable housing (e.g. for low to middle income buyers), LEED Certified Green Buildings and development consistent with smart growth principles including “Livable Delaware” goals.

II. DEFINITIONS

- (1) **Brownfield Redevelopment Project** means the redevelopment of vacant, abandoned or underutilized property with one or more sources of known or perceived contamination. A project may include multiple parcels or multiple operable units and includes all the planned development such as office buildings, residential units, or commercial units shown on the conceptual site plans for the project. In addition, all projects entailing multiple parcels, or projects that divide a single parcel into operable units (OUs) or HSCA identification numbers, are to be considered a single project, eligible for one (1) funding allocation.
- (2) **Chronic Violator** means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State’s environmental permits, laws, or regulations as administered by the Department, pursuant to 7 Del.C. Chapter 79 and the regulations promulgated thereto.
- (3) **Direct Pay Method** means once the costs are billed to a *Public Entity* or *Non-Profit* organization by a contractor or consultant, the Department

reimbursement will be sent directly to the contractor or consultant upon submission by the organization of a request for payment and copies of invoices with adequate detail to indicate eligible costs.

- (4) **Fiscal Year** means the State *fiscal year*, which runs from July 1 of a year through June 30 of the following year.
- (5) **LEED Certified Green Building** means a project that has conformed and been certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating Program. (www.usgbc.org)
- (6) **Non-Profit** means a 501(c)(3) corporation as defined in Title 26 of the United States Code (may include redevelopment authorities, community development corporations, churches, etc.).
- (7) **Public Entity** means a State Agency or body, county or local government or housing authority.

III. AMOUNT

(1) There is authorized up to five million dollars (\$5,000,000) from the Fund in any *fiscal year* for the purpose of providing Brownfields Grant funding to eligible private and *public entities*. Of this amount, no more than two and one half million dollars (\$2,500,000) shall be used for the purpose of providing Brownfields Grant funding to either class of applicant.

(2) (a.) No more than one million dollars (\$1,000,000) may be allocated to any one *public entity* or *non-profit brownfields redevelopment project* and/or applicant in any single *fiscal year*. In addition, *public entity* or *non-profit brownfields redevelopment projects* other than affordable housing projects are limited to one million dollars (\$1,000,000) per project.

(b.) *Public Entity* and *non-profit* entities may opt for a direct-pay method rather than reimbursement for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Private entities eligible for Brownfields Grant funding shall only be reimbursed for allowable environmental costs incurred up to the allowable amount per this policy.

(3) (a.) For Brownfields Grant funding to private parties, no more than two hundred twenty-five thousand dollars (\$225,000) may be reimbursed to any single private *brownfields redevelopment project* for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Of this amount, the first potential one hundred twenty-five thousand dollars (\$125,000) being a dollar to dollar reimbursement, and the second potential one hundred thousand dollars (\$100,000) being a fifty cents to the dollar reimbursement;

(b.) No more than one million dollars (\$1,000,000) may be allocated to any one *private entity* in a single *fiscal year*.

IV. ELIGIBILITY FOR BROWNFIELD GRANTS

(1) Owners or prospective purchasers are eligible to apply for State brownfields grant funding for *Public* or *Non-Profit entities* under the following conditions:

1. The property must be certified as a Brownfields pursuant to Section 14.5 of *The Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding;
2. The applicant must be a non-profit corporation or public entity;
3. The applicant must affirmatively demonstrate that they/it did not cause or contribute to the actual release(s) of hazardous substances;
4. The applicant is in full compliance with all other environmental requirements in Delaware;
5. The applicant must not be a *chronic violator*; and
6. The applicant must not be subject to any current enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

(2) Owners or prospective purchasers are eligible to apply for State Brownfields Grant funding for private entities under the following conditions:

1. The property must be certified as a Brownfields pursuant to Section 14.5 of *The Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding;
2. The applicant must certify that they/it did not cause or contribute to the actual release(s) of hazardous substance(s) and show due diligence was performed or is being performed;
3. The applicant is in full compliance with all other environmental requirements in Delaware;
4. The applicant must not be a *chronic violator*; and
5. The applicant must not be subject to any current enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

V. USE OF FUNDS

(1) Monies awarded under the Brownfields Grant program must be used solely for environmental assessments, investigation, remedial activities approved by the Department, or for Department oversight charges. Approved and non-approved activities are detailed in the Brownfields Grant Guidance attached, **Attachment A**.

(2) The Brownfields Grant Guidance may be amended as needed by the Director of the Division of Air and Waste Management (DAWM) without prior approval by the Secretary.

VI. APPLICATION FOR FUNDING

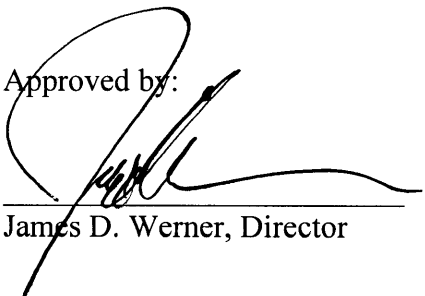
- (1) Funding shall be provided only to those parties who apply to the DNREC using the *Delaware Hazardous Substance Cleanup Act Joint Application for Brownfields Development Agreement and Brownfields Certification/Grant Funding*.
- (2) Funding shall be provided only to those applicants who have entered into a Brownfields Development Agreement (BDA) or Brownfields Voluntary Cleanup Program (BFVCP) Agreement pursuant to HSCA.
- (3) Upon request by the Secretary, or his designee, the applicant shall provide any and all documentation regarding all completed and ongoing environmental investigations of the property.

VII. MISCELLANEOUS

- (1) The Secretary, or his designee, shall include the Brownfields Grant appropriations in the annual budget and provide 5-year projections of such expenditures from the Fund as directed by 7 Del. C., §§ 9104(c)(2) and (3).
- (2) Any Brownfields grant decision under this policy is in the sole, non-reviewable discretion of the Secretary or his designee.
- (3) All requests for payments from the Department for allowable reimbursement or direct pay costs shall be accompanied by a certificate from the qualified consultant stipulating that the costs are true and accurate to the best of their knowledge.
- (4) For the purposes of Brownfields Grant funding, all brownfields redevelopment projects entailing multiple parcels, or *brownfields redevelopment projects* that divide a single parcel into operable units (OUs) or HSCA identifiable numbers, are to be considered a single *brownfields redevelopment project*, eligible for one (1) funding allocation.
- (5) Brownfields Grant funding for either class of applicant will be made upon completion of the *brownfields redevelopment project* or in partial increments during the *brownfields redevelopment project*, of no less than ten thousand dollars (\$10,000), prior to the final payment.
- (6) Eligible grant funds unused by any Brownfields Grant approved entity within a single fiscal year shall not be carried over to the following fiscal year.

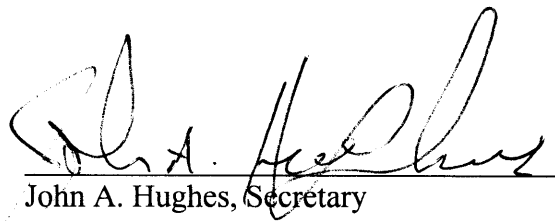
- (7) This Policy on Brownfields Grants supersedes the prior policy dated March 2004.

Approved by:



James D. Werner, Director

13 Nov 2006
Date



John A. Hughes, Secretary

11-17-06
Date

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